

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI**

**BUSEY BANK, an Illinois banking  
corporation,**

**Plaintiff,**

**v.**

**BENJA INCORPORATED,**

**and**

**ANDREW J. CHAPIN,**

**Defendants.**

**Case No.: 4:20-cv-01473-HEA**

**EMERGENCY MOTION FOR EXPEDITED  
HEARING ON VERIFIED EXPEDITED MOTION  
FOR APPOINTMENT OF GENERAL RECEIVER**

Plaintiff Busey Bank (“Plaintiff” or the “Bank”), by and through its undersigned counsel, requestfully requests that this Court set an expedited hearing on its Verified Expedited Motion for Appointment of General Receiver (the “Motion”) filed in this action, and in support thereof states as follows:

**Procedural History**

1. On October 9, 2020, the Bank filed a Verified Petition (the “Petition”) against Defendants Benja Incorporated (“Benja”) and Andrew J. Chapin (“Chapin”) in the Circuit Court of St. Louis County, Missouri (the “Circuit Court”), Case No. 20SL-CC05024, seeking, among other things, the appointment of a general receiver for Benja and the Collateral<sup>1</sup> identified in the Petition.

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<sup>1</sup> Capitalized terms herein shall have the same meaning as ascribed to them in Plaintiff’s Petition.

2. Along with the Petition, the Bank filed the Motion and supporting affidavits, including the Affidavit of Joe Alouf (the “Alouf Affidavit”). Defendants were served with the Bank’s filings on October 9, 2020.

3. As set forth in the Alouf Affidavit, Chapin, both individually and on behalf of Benja, has committed (and continues to commit) a substantial and ongoing fraud against the Bank, other lenders, and investors.

4. Given the exigencies involved, the Bank sought an expedited hearing on the Motion before the Honorable Nancy McLaughlin of the Circuit Court, who was assigned to the cause. Judge McLaughlin set the expedited hearing on Tuesday, October 13, 2020, at 9:00 a.m.

5. On October 12, 2020, the day before the scheduled hearing, Defendants, through counsel Ryan J. Mason, filed an Application for Change of Judge pursuant to Missouri State Court Rule 51.05, seeking to have the case reassigned to a different judge.

6. On October 13, 2020, Judge McLaughlin granted the Application for Change of Judge.

7. Immediately thereafter, Chief Judge Michael Burton of the Circuit Court agreed to hear the Motion on an expedited basis and set the hearing for 4:00 p.m. yesterday.

8. Shortly before Judge Burton was to hear the Motion, Defendants, through counsel Ryan J. Mason, filed a Notice of Removal which removed this cause to this Court.

#### **Grounds for Expedited Hearing**

9. As was the case with Judges McLaughlin and Burton in the Circuit Court, the Bank seeks an expedited hearing on the Motion by this Court. Just cause exists to hold an expedited hearing, including:

a. The Bank’s counsel recently learned from Brian Buster, counsel for

Thomas Goode III (the former Chief Technology Officer of Benja) that Chapin recently acquired from Mr. Goode the administrative control over Benja's email accounts at Google, that Chapin may have deleted incriminating emails from the accounts, and that pursuant to the default Google document retention settings, any deleted emails may no longer be recoverable at Google on or after October 18, 2020;

b. Chapin submitted a materially false financial statement of Benja to a lender, E-Revshare Core, LLC d/b/a Empowerment Capital ("Empowerment"), in connection with a \$1 million loan made by Empowerment to Benja (*see* Alouf Affidavit, at ¶ 13);

c. Chapin altered bank account statements for a deposit account of Benja maintained at the Bank to falsely reflect that Benja had hundreds of thousands or millions of dollars on deposit in the Bank account, which Chapin presented to Empowerment, other creditors and investors (*see* Alouf Affidavit, at ¶¶ 34-36; Exhibit C to Alouf Affidavit);

d. Chapin executed and delivered to the Bank borrowing base certificates from March to July 2020 reflecting accounts receivable totaling between \$4.7 million to \$6 million, which are inaccurate as the actual Bank statements do not reflect any deposits made to the Bank account from the purported customers appearing in the borrowing base certificates indicating that the accounts receivable are real (*see* Alouf Affidavit, at ¶ 37; Motion, ¶ 5);

e. Chapin has caused Benja to open a separate account at JPMorgan Chase Bank ("Chase"), which is not permitted under the Bank's loan documents, through which he has caused Benja to engage in suspicious transfers in furtherance of his fraud (*see*

Alouf Affidavit, at ¶¶ 38-39);

f. Chapin has caused Benja to distribute approximately \$4.6 million to a company called the Taco Corporation of America, apparently in repayment of purported equity interests in the company<sup>2</sup> (*see* Alouf Affidavit, ¶ 38);

g. Chapin has been attempting to gain control over the Benja account at Chase since he rescinded his resignations (*see* Alouf Affidavit, at ¶ 40);

h. At the insistence of investors and Benja's former counsel, Chapin agreed to resign as CEO and Director of Benja and appoint a new sole Director for the company and Mr. Alouf as Interim President, but immediately thereafter reversed course and rescinded his resignations and the appointment of the new Director and Interim President, based on his authority as purported majority shareholder. However, it is not clear what corporate authority Chapin has and what percentage ownership he has in Benja (*see* Alouf Affidavit, at ¶¶ 28-30, 32);

i. Chapin's actions have caused three different law firms to resign in quick succession (*see* Alouf Affidavit, at ¶¶ 26, 32, 41); and

j. Chapin caused a fictitious email account to be created in the Benja email domain for a purported chief financial officer and sent emails to lenders and investors on behalf of the purported CFO without her knowledge or consent (*see* Alouf Affidavit, at ¶ 11). Since the filing of the Petition, Motion and Alouf Affidavit, the Bank has learned that Chapin has impersonated an attorney at Armstrong Teasdale by sending fake emails

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<sup>2</sup> Upon information and belief, the original investment of Taco Corporation of America may have been as small as \$200,000 - \$400,000.

under her name in furtherance of his fraudulent schemes.<sup>3</sup> A recent email exchange between the attorney and one of Benja's directors reflecting Chapin's actions is attached hereto as **Exhibit A**.

10. In order to stop Chapin's ongoing fraud on behalf of Benja to the detriment of the Bank, other lenders and investors, and to preserve the Benja emails and other documents at Google, and otherwise, and to preserve any funds of Benja at Chase, the immediate appointment of a Receiver for Benja and the Collateral is necessary.

11. The Bank is entitled to the immediate appointment of a Receiver for Benja and the Collateral pursuant to RSMo. §515.500 et seq. (known as the Missouri Commercial Receivership Act), and the terms of the Bank's loan documents.

12. Because Defendants are represented by counsel and were served with the Motion, Petition and supporting Affidavits five days ago, they have had ample time to prepare to respond to the Motion and therefore will not be prejudiced by the Motion being heard on an expedited basis.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order:

A. Scheduling an expedited hearing on the Motion at the earliest time convenient to the Court; and

B. Granting such other and further relief as the Court deems just and proper.

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<sup>3</sup> The "DocuSign email" attached to **Exhibit A** makes it appear that attorney Jennifer Byrne "copied" herself at [jbyrne@armstrongteasdalemail.com](mailto:jbyrne@armstrongteasdalemail.com), which is an email domain that does not currently exist. Jennifer Byrne's actual email address at Armstrong Teasdale is [jbyrne@atllp.com](mailto:jbyrne@atllp.com).

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*ATTORNEYS FOR PLAINTIFF*  
*BUSEY BANK*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing pleading was served by electronic filing in the CM/ECF system of the United States District Court for the Eastern District of Missouri this 14th day of October, 2020 to all parties requesting service.

/s/ Michael A. Campbell